Local 32, International Longshoremen's and Warehousemen's Union *and* Weyerhaeuser Company and Association of Western Pulp and Paper Workers, Local 10. Case 19-CD-411

7 March 1984

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

This is a proceeding under Section 10(k) of the National Labor Relations Act, following a charge filed by Weyerhaeuser Company (the Employer) alleging that Local 32, International Longshoremen's and Warehousemen's Union (ILWU) had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by Association of Western Pulp and Paper Workers, Local 10, herein called AWPPW.

Pursuant to notice, a hearing was held before Hearing Officer George Hamano on 12 October 1982. The Employer and ILWU appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings.

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a Washington corporation, is engaged in the business of manufacturing wood products. During the past calendar year, a representative period, the Employer realized gross revenues in excess of $500,000 and, during the same period, sold goods valued in excess of $50,000 directly to customers located outside the State of Washington. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction.

II. THE LABOR ORGANIZATION INVOLVED

The parties stipulated, and we find, that Local 32, International Longshoremen's and Warehousemen's Union and Association of Western Pulp and Paper Workers, Local 10, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

The Employer, an integrated forest products company, is engaged in the business of developing and manufacturing various wood products. As part of its overall operation, the Employer owns and operates several private docks utilized to distribute its products by means of oceangoing vessels and barges. One of the Employer's docks, the T-M dock, is located at Everett, Washington, and is the situs of the instant dispute.

Traditionally, the T-M dock has been utilized by the Employer for the shipment of its own goods, produced either in the Everett area or at other nearby facilities of the Employer. The vessels loaded at the T-M dock most often are either owned or chartered by the Employer. Sometimes, however, ships neither owned or chartered by the Employer use the T-M dock, although these vessels load goods owned by the Employer.

In the normal course of events, work at the T-M dock is performed in the following manner. When a ship enters the dock area, employees of the Employer represented by AWPPW tie up the ships. The cargo to be loaded is then brought from an adjacent warehouse to shipside. This work, too, is performed by employees represented by AWPPW.

Once the goods are placed at shipside, they are hooked to the ship's gear and lifted onto the ship by cranes. This work traditionally has been performed by employees represented by ILWU. These employees are employed by Jones-Washington Stevedoring Company, hereinafter called JWSC.[1] Once the vessel is loaded, it is cast off by employees of the Employer represented by AWPPW.

The above-described work was the subject of a recent 10(k) determination by the Board.[2] In its Decision and Determination of Dispute, the Board awarded the work of tying up the ships, bringing goods from the warehouse to shipside, and casting off the ships at the T-M dock to employees represented by AWPPW.

A short distance from the T-M dock is the Port of Everett, a publicly owned port facility that maintains and operates several berths or docks for

[1] JWSC operates at the T-M dock pursuant to a contract with the Employer. The Employer pays JWSC its costs, i.e., wages and fringe benefits for the employees as established by the Pacific Coast Longshore Contract Document (PCLCD), plus a management fee. The Employer is not a signatory to the PCLCD.

[2] *Longshoremen ILWU Local 32 (Weyerhaeuser Co.)*, 256 NLRB 167 (1981), hereinafter *Weyerhaeuser I*.

the loading of oceangoing vessels and barges. The vast percentage of cargo loaded at the Port of Everett is logs. It appears that employees represented by ILWU exclusively perform the work of tying up vessels, loading cargo, and casting off vessels at the Port of Everett.

In early August 1982, JWSC's manager, Kenneth Engleson, began seeking dock accommodations at the Port of Everett for a log ship, the *Great Ocean*. The *Great Ocean* was chartered by Kawasho International (Kawasho) and was due into Everett to pick up logs from an unspecified owner (not the Employer). Kawasho had hired JWSC to do the loading work and had also hired Fritz Maritime Company, hereinafter called Fritz, to act as ship's agent.

Engleson was unable to secure a berth for the *Great Ocean* at the Port of Everett, inasmuch as all berths were filled. In an effort to avoid a costly wait for *Great Ocean*, Engleson contacted the Employer's dock superintendent, Gary Redding, and asked if *Great Ocean* could use the T-M dock to load its logs. Redding told Engleson he would have to check with his supervisors. Redding did so and, several days later, informed Engleson that *Great Ocean* could use the T-M dock.

Redding was next contacted by Fritz' representative, Shigley. Shigley was informed that the Employer would impose the same charges on *Great Ocean* as the Port of Everett. Shigley agreed. Redding also told Shigley that employees of the Employer represented by AWPPW would do the tying up and casting off of the vessel. Shigley agreed again. It should also be noted that Fritz has no contractual arrangement with JWSC.

On 7 August 1982, at 12:15 a.m., the *Great Ocean* arrived at the T-M dock. The vessel was tied up by employees represented by AWPPW. That morning, employees represented by ILWU commenced loading logs from the water onto the *Great Ocean*. Work went on for several days until approximately 3:30 p.m. on 12 August 1982 when the ILWU employees walked off the job to protest the assignment of tying up and casting off the ship to employees represented by AWPPW. They returned to work the next day and the loading of the *Great Ocean* was eventually completed.

B. *The Work in Dispute*

The parties are unable to agree on a statement of the work in dispute. The Employer argues that the work in dispute is the tying up and casting off of vessels at the Employer's T-M dock at Everett, Washington. The ILWU asserts that the work in dispute is the tying up and casting off of vessels neither owned nor chartered by the Employer that are to be loaded with logs from the water, which logs are not owned by the Employer.

In our view, the ILWU's characterization of the work in dispute is inappropriate. As noted, employees represented by AWPPW have the undisputed right to do the linework on vessels owned or chartered by the Employer that are being loaded with the Employer's goods. In addition, record testimony reveals that these same employees have done the linework on vessels neither owned nor chartered by the Employer. Also, it is undisputed that the linework performed is the same for each vessel, regardless of its cargo. Thus, by seeking to distinguish work on the basis of vessel ownership or cargo, the ILWU is attempting to bifurcate the appropriate work description by relying upon considerations that have no bearing upon the performance of the work itself. Accordingly, we find, in agreement with the Employer, that an accurate description of the work in dispute is the tying up and casting off of vessels at the Employer's T-M dock at Everett, Washington.

C. *Contentions of the Parties*

The Employer contends that the disputed work should be assigned to its own employees represented by AWPPW. It argues that the disputed work has consistently and traditionally been performed by those employees and, indeed, the Board's award of the linework to AWPPW employees in *Weyerhaeuser I*, supra, compels a similar award in the instant case. It argues that any distinctions based on cargo or vessel ownership are irrelevant.

The ILWU presents alternative arguments. First, it contends that the instant dispute does not constitute a "jurisdictional dispute" within the meaning of Section 10(k) and Section 8(b)(4)(D) of the Act inasmuch as it claims the ILWU was seeking only to preserve work that had been performed traditionally by its members. In this regard, it argues that this is a work-preservation dispute created solely by the action of JWSC rather than a situation where rival groups of employees are using coercion to compel a neutral employer to choose between their conflicting claims.

Alternatively, ILWU argues that if the instant dispute does fall within the ambit of Section 10(k), the work should be assigned to employees it represents. In support of its view, the ILWU relies on industry and employer practice, relative skills and safety, job impact, and certain collective-bargaining provisions.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the

Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

At the hearing, the parties stipulated that on 12 August 1982 employees represented by ILWU engaged in a work stoppage during the loading of the vessel *Great Ocean* at the Employer's T-M dock at Everett, Washington. The parties refused to stipulate as to the purpose of the work stoppage. The parties did stipulate that there exists no agreed method for the voluntary adjustment of the disputed work.

As noted above, ILWU's primary contention is that its actions do not come within the proscriptions of Section 8(b)(4) because it sought only to preserve work that had been performed traditionally by employees it represents. The work to be preserved, according to ILWU, is the linework on vessels neither owned nor chartered by the Employer utilized to load logs (also not owned by the Employer) from the water. Thus, it asserts that JWSC, alone, caused the dispute by deviating from established contractual practices and diverting the vessel *Great Ocean* to the Employer's T-M dock. In short, ILWU contends that JWSC diverted unit work to another situs and ILWU lawfully protested this action in order to preserve the work of the employees it represents.

We are unable to accept the ILWU contentions that its actions constitute an effort to preserve work and that, therefore, its work stoppage is outside the proscriptions of Section 8(b)(4)(D) and that the instant dispute does not fall within the parameters of Section 10(k). In so concluding, we note initially that when viewed in its simplest terms the ILWU has sought by its work stoppage to force the reassignment of work from one group of employees (those represented by AWPPW) to another group of employees (those represented by ILWU). Such action is the very essence of Section 8(b)(4)(D)'s proscription and is precisely the type of dispute which Section 10(k) was enacted to resolve.[3]

Secondly, we find that the ILWU cannot properly shield its actions by claiming that it is seeking only to preserve work it has traditionally performed. In this regard, the record is abundantly clear that employees represented by ILWU have, at no time, performed the work of tying up or casting off vessels at the Employer's T-M dock. Instead, such work has been traditionally performed exclusively by employees represented by AWPPW. Therefore, what is missing in the ILWU's claim is the sine qua non for "work preservation," i.e., the possession of the work in the first place. In other words, work-preservation concepts contemplate a union's effort to retrieve lost jobs, not the securing of new ones.[4]

Based on the foregoing, and the record as a whole, we find that an object of ILWU's work stoppage was to force or require the assignment of disputed work to employees represented by it. Accordingly, we find that reasonable cause exists to believe that Section 8(b)(4)(D) of the Act has been violated.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.[5] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience reached by balancing those factors involved in a particular case.[6]

The following factors are relevant in making the determination of the dispute before us.

1. Collective-bargaining agreements

There are no collective-bargaining agreements to which all parties in the instant dispute are signatories. The Employer, however, refers to a settlement agreement entered into in 1973 between it, the ILWU, and the International Woodworkers of America, AFL-CIO. The preamble of the agreement, which settled then pending litigation, states that the agreement's purpose is "to regulate their [the parties] present and future relationships." Paragraph 3(a) of the agreement provides:

> Past work practices will be maintained at all other existing facilities and docks owned or operated by Weyerhaeuser. Future changes of forest products cargo will not require changes in past work assignment.

ILWU relies upon language contained in the collective-bargaining agreement between it and the Pacific Maritime Association (PMA) referred to as the PCLCD (see fn. 1, supra). Although the Em-

[3] *Longshore Workers Local 62-B (Alaska Timber)*, 261 NLRB 1076 (1982).

[4] Nor can the ILWU avoid these principles by asserting its apparent general jurisdiction to do linework on log ships along the upper west coast and, in particular, at the Port of Everett. For the mere fact that the ILWU has jurisdiction at other port facilities simply does not mean that its efforts to secure such work at the T-M dock constitute protected work preservation. Indeed, such efforts to tailor its actions to work-preservation concepts result in the ILWU's need to characterize the "work in dispute" in the fragmented manner discussed above.

[5] *Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961).

[6] *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

ployer is neither a member of the PMA nor a signatory to the PCLCD, the ILWU, nonetheless, argues that section 1.6 which grants the ILWU general jurisdiction over linehandling supports its claim in the instant dispute. We note also that section 1.8 of the PCLCD provides that certain work, including the linehandling referred to in section 1.6 "that was done by nonlongshore employees of an employer or by subcontractor pursuant to a past practice that was followed as of July 1, 1978, may continue to be done by nonlongshore employees of that employer . . . at the option of said employer."

In our view, none of the foregoing collective-bargaining agreement provisions, standing alone, is dispositive. We do find, however, certain contractual deference to the maintenance of existing[7] practices at individual sites. Thus, even though the instant dispute arises out of a somewhat unique historical circumstance, the repeated contractual deference to maintenance of established practices carries some relevance. In addition, although general grants of jurisdiction are sometimes useful in resolving disputes, we are reluctant to place great weight upon them at the expense of the particular facts presented in a given case.[8] Accordingly, to the slight extent the provisions favor any of the parties, we find them to be more consistent with the position of the Employer.

2. Company and industry practice

As noted previously, the ILWU relies heavily upon the industry practice of having employees represented by ILWU do the linehandling work on vessels loading logs out of the water. It particularly emphasizes the existence of this practice at the Port of Everett, the *Great Ocean's* original destination. ILWU argues that this practice (embodied in the PCLCD) entitles it to do the work on such vessels at the T-M dock despite the fact that all parties agree that employees represented by AWPPW are entitled to the linehandling work of other vessels (Employer owned or chartered loading Employer goods) at the T-M dock.

The Employer in effect concedes the argument on industry practice but emphasizes the practice at its T-M dock. Employees represented by AWPPW have always done the linework at that dock and, the Employer argues, the ownership or charter of the ship and the type of cargo being loaded are irrelevant. Indeed, the record shows that employees represented by AWPPW have done the linework on vessels neither owned nor chartered by the Employer. In addition, it is undisputed that regardless of the type of cargo being loaded, the linehandling work is identical.

Based on the foregoing, we find the past practice at the T-M dock a substantially more persuasive factor than the industry practice relied upon by ILWU. Employees represented by AWPPW have consistently been the employees utilized exclusively in linework at the T-M dock. As noted, this has been true regardless of the ownership or charter party of the vessel being docked. In addition, the linework performed at the T-M dock is identical regardless of the cargo loaded.

Furthermore, ILWU's reliance on "industry practice" is somewhat flawed. For nowhere in the record is there any evidence of a dock facility at which the linework is artificially bifurcated in the manner urged by ILWU. Accordingly, we find that considerations of company and industry practice weigh in favor of the Employer's position.

3. Relative skills; economy and efficiency of operations

Both groups of employees in the instant dispute appear to have equal relative skills in handling the linework at issue. While ILWU presented evidence of the dangers involved in the work, employees represented by AWPPW have apparently been able to perform the work in the past without incident. As for economy and efficiency of operations, no group of employees appears to enjoy a meaningful advantage over the other. Accordingly, we find these to be neutral factors in the instant case.

4. Joint board determinations; union agreements; arbitration decisions

The ILWU relies upon an arbitration award issued shortly after its work stoppage. The award stated that employees represented by ILWU were entitled to do the linehandling work on the *Great Ocean*. We find, however, that this award provides no meaningful aid in resolving the dispute inasmuch as the parties to the award were the ILWU and JWSC and it was predicated upon interpretation of the PCLCD. Thus, the Employer was in no way involved in or bound by the award.

5. Employer preference

The Employer has, throughout this proceeding and otherwise, repeatedly stated its preference that the disputed work be awarded to its employees represented by AWPPW.

6. Previous 10(k) awards

As set forth earlier, the Board recently issued a Decision and Determination of Dispute involving

[7] See *Weyerhaeuser I*, supra, 256 NLRB at 170.

[8] *Longshoremen Local 991 (Union Carbide Chemical)*, 137 NLRB 750, 755 (1962).

these same parties and the Employer's T-M dock. (See fn. 2, supra.) In that case, the Board awarded the following work to employees represented by AWPPW:

> . . . handling of cargo from the warehouse or last point of rest to shipside and the tying up and casting off lines of vessels at the Employer's dock at Everett, Washington.

The ILWU argues that the award has no bearing here because the Board stated that its decision was "limited to the particular controversy which gave rise to [the] proceeding."

We agree with the ILWU that the Board's earlier decision, standing alone, is not dispositive of the instant dispute. We do find, however, that the previous award militates strongly in favor of a similar award here. Although the facts in the two cases are not identical, a preponderance of the factors present in the earlier case are present here. In addition, we find no meaningful basis, either in this case or in the previous decision, for adopting the ILWU claim that linework at the T-M dock should be divided between the competing groups of employees.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees of the Employer who are represented by the Association of Western Pulp and Paper Workers, Local 10, are entitled to perform the work in dispute. We reach this conclusion relying on the expressed preference of the Employer, the long-established practice of assigning all linehandling work at the T-M dock to employees represented by AWPPW, the Board's previous award of such work to those employees in a similar proceeding involving the same parties, and the contractual provisions indicating deference to established work practices at individual sites. We note also that a ruling in favor of ILWU would result in the anomalous situation of having work divided between two groups of employees on the basis of considerations that have no bearing on the actual work being performed. In making this determination, we are awarding the work in question to employees represented by AWPPW, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Weyerhaeuser Company who are represented by Association of Western Pulp and Paper Workers, Local 10, are entitled to perform the work of casting off and tying up lines of vessels at the Employer's dock at Everett, Washington.

2. Local 32, International Longshoremen's and Warehousemen's Union is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Weyerhaeuser Company to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 32, International Longshoremen's and Warehousemen's Union shall notify the Regional Director for Region 19, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

MEMBER ZIMMERMAN, dissenting in part.

I agree with my colleagues that the instant proceeding is a jurisdictional dispute within the meaning of Section 10(k) and Section 8(b)(4)(D) of the Act. Unlike my colleagues, however, I would find that the work in dispute is the tying work on vessels present at the Everett dock for the purpose of loading goods other than those from the Weyerhaeuser warehouse. In addition, based upon considerations of economy and efficiency of operations, I would award the disputed work to employees represented by ILWU.

In defining and awarding the disputed work, the majority finds no meaningful distinction between the work performed on vessels loading goods from the Employer's dockside warehouse and goods loaded from the water, as is the case here.[1] In my view, there is such a distinction, particularly in view of the relative efficiency and economy of operations inherent in each situation. In this regard, our award of the tying work to employees represented by AWPPW in *Weyerhaeuser I* [2] was predicated, in large part, upon efficiency and economy factors inasmuch as employees represented by AWPPW were already required to be present at the dock to do the work of moving goods from the warehouse to shipside. Accordingly, the tying work was a logical part of the work required in receiving a vessel and commencing the loading operation.

In the instant case, however, because the goods to be loaded are not processed through the Employer's warehouse, there is no reason whatsoever for employees represented by AWPPW to be

[1] I agree with my colleagues that ownership of the vessel in question is an irrelevant factor.

[2] 256 NLRB 167 (1981).

present at the dock. Instead it is only employees represented by ILWU who would normally need to be present, since it is those employees who will carry out the principal work to be performed. Thus, in much the same way as the tying work was viewed to be a logical and natural part of the work performed by employees represented by AWPPW in *Weyerhaeuser I*, the tying work here is a logical and natural part of the work performed by employees represented by ILWU.[3]

In short, I find that considerations of economy and efficiency of operations overwhelmingly favor an award of the disputed work to employees represented by ILWU.[4] I therefore dissent.

[3] In a practical sense, the tying work in both situations is ancillary to the major portion of work performed. For this reason, I believe the majority pays undue deference to the award in *Weyerhaeuser I*. In my view, the import of our earlier decision lies in its determination of which group of competing employees would most naturally perform the ancillary work of tying and untying the vessels.

[4] It also appears to me that the majority's reliance upon employer practice is unavailing inasmuch as there exists no practice for assigning work in the circumstances presented here. As for employer preference, that factor does support the majority's award, but "an employer's assignment of disputed work cannot be made a touchstone in determining a jurisdictional dispute." *Carpenters Local 1102 (Don Cartage Co.)*, 160 NLRB 1061, 1078 (1966).